

Item B3

Appeal by SITA (GB) Ltd against refusal for an Integrated Waste Management Facility, at Ridham Dock, Iwade, Sittingbourne – SW/99/777.

A report by Head of Planning Applications Unit to Planning Applications Committee on 10 December 2002.

SW/99/777– Report on the decision by the Secretary of State to dismiss the appeal against refusal for permission for an Integrated Waste Management Facility, by SITA (GB) Ltd, at Ridham Dock, Iwade, Sittingbourne.

Recommendation: Members receive this report for information purposes

Local Member: Mrs P. Stevens

Unrestricted

Introduction

1. A public Inquiry was held between 16 October and 14 December 2001, into an appeal by SITA (GB) Ltd against the decision of the County Council to refuse planning permission for an Integrated waste management facility (incorporating an energy from waste plant) on land at Ridham Dock, Iwade, Sittingbourne.
2. Having carefully considered the Inspector's report, and the additional information provided after the inquiry closed, the Secretary of State has decided to dismiss the appeal for the reasons set out below.
3. I briefly reported this decision to the November meeting under paragraph (13) of Item B1, which was my half year report on performance against the 2002/03 Business Plan. This report gives a fuller account of this important decision. I should stress, however, that the appellant, at the time of writing, may still appeal to the High Court on a point of law. I shall report on whether this right has been exercised or not at the meeting.

Policy Considerations

4. In deciding the appeal, the Secretary of State had to have regard to section 54A of the Town and Country Planning Act 1990, which requires him to determine appeals in accordance with the development plan, unless material considerations indicate otherwise.
5. In this case, the development plan comprises the Kent Structure Plan, the Kent Waste Local Plan and the Swale Borough Local Plan. Key among the *'other'* material considerations are: Planning Policy Guidance note 9: "Nature Conservation", Policy Guidance note 10: "Planning and Waste Management", Planning Policy Guidance note 23: "Pollution", Regional Planning Guidance 9: "The South East", SERPLAN'S Revised Waste Planning Advice: A Sustainable Waste Planning Strategy for the South East 1996 - 2010 and Waste Strategy 2000.

Main Issues and Considerations

6. The Secretary of State agreed with the Inspector's conclusions in his report that the main considerations in this appeal were:
- the likely effect of the emissions on the sites of international importance for birds, and other flora and fauna;
 - the need for the incinerator
 - whether the proposal would represent the Best Practicable Environmental Option (BPEO)
 - the likely effect of the emissions on human health
 - the potential impacts of land contamination and of flooding
 - whether there would be an interference with the fundamental human rights of occupiers of properties potentially affected.

The Secretary of State concluded as follows on each of these key issues:

Nature Conservation and Landscape Impact

7. The proposal and its potential emissions would not have an adverse effect on the 'integrity' of the SSSI/SPA/Ramsar site. The impact on ecology, was therefore not contrary to the relevant policies in the development plan, or indeed the national policy objectives in PPG9. However, such a prominent building in this flat estuarine landscape would not be in keeping with the area.

Need for the development

8. On balance "demonstrable harm" has been shown warranting an assessment of the need for the proposal.
9. No agreement was reached at the Inquiry on the method to be used for assessing need and capacity, or indeed, the capabilities of existing and emerging waste facilities. Nevertheless, it was common ground that the period to consider was up to 2011, equating with the plan period for the Kent Waste Local Plan.
10. It is unlikely that London will achieve self-sufficiency in the short term, and that disposal to sites outside the capital will continue. However, until it is established to what extent Kent will be expected to contribute to meeting the waste disposal needs of London, and the form that contribution should take, it is not possible to say what overall level of waste disposal capacity Kent should be attempting to provide.

Appeal by SITA (GB) Ltd against refusal for an Integrated Waste Management Facility, at Ridham Dock, Iwade, Sittingbourne – SW/99/777.

11. Overall, the appellant has not clearly established at this time that, by the end of the Kent Waste Local Plan period, there will be insufficient capacity to meet the need for the disposal of industrial / commercial and municipal wastes in Kent.

Principles of waste management - BPEO

12. PPG10 and Waste Strategy 2000, requires that decisions on waste management proposals should be assessed on the consideration of the Best Practicable Environmental Option (BPEO) for each waste stream; in the context of regional self sufficiency; the proximity principle; and the waste hierarchy. Waste Strategy 2000 advises that the BPEO procedure should establish the option that provides most benefits or least damage to the environment as a whole, at an acceptable cost, in the long and short term.
13. In the absence of a strategic assessment to demonstrate whether the proposal was consistent with the BPEO, a site specific assessment was appropriate and is a material consideration.
14. The appellant's BPEO assessment used the Environment Agency's software tool, WISARD and considered five options, based in the first instance, on managing municipal waste arisings from north Kent. The options involving energy from waste (i.e. the appeal proposal and the permitted plant at Allington) achieved the highest scores, with the appeal proposal being preferred. However, given the subjective nature of such assessments and the fact that they do not provide absolute scores, the result was too close to rule either out as representing the BPEO.
15. The appeal site would be relatively well located to meet disposal needs within the intended catchment area of north Kent. However, the waste would not be available to the appeal facility through the timing of the County Council's contracts for that area. Therefore, *in the absence of details as to the location of the sources of alternative arisings, it is not possible to make any assessment which would clearly indicate that wastes incinerated at the appeal site would comply with the proximity principle.*
16. Inclusion of an Ash Recycling Facility allows a sufficient contribution to achieve the 25% national recycling target for 2004/5, but this would not meet the higher targets of 30% required by 2010 or 33% by 2015 as set out in Waste Strategy 2000.
17. The efficient operation of a Materials Recycling Facility depends on effective source separation of waste and there is *no indication that the appellant could achieve this level.*
18. Waste Strategy 2000 also states that those developing energy from waste plants should always consider the potential for incorporating Combined Heat and Power facilities. Insufficient consideration has been given to this option.
19. For these reasons the Secretary of State does not believe that BPEO has been clearly demonstrated in this case.

Appeal by SITA (GB) Ltd against refusal for an Integrated Waste Management Facility, at Ridham Dock, Iwade, Sittingbourne – SW/99/777.

Effect on human health

20. PPG23 advises against the duplication of the controls imposed on developers under the planning and pollution control regimes and that all new incinerators will be regulated under the Pollution and Prevention Control regime (IPPC). The statutory responsibility for this lies with the Environment Agency.
21. In the absence of relevant matters before the inquiry, if the application for an IPPC permit is ultimately granted by the Environment Agency for an Energy from Waste plant on the appeal site, then it is likely that the effect on human health will be minimal.
22. Turning to the issue of public concern, there are no particular features of this proposal in this location which indicate that the precautionary principle should be applied to override any future decision of the Environment Agency as the body with the statutory duty to ensure that proposals for incineration are undertaken without significant pollution causing harm to human health.

Flooding and contamination issues

23. The national standards for tidal flooding set out in PPG25 would be met, and there would be no undue risk of rapid inundation without warning.
24. Most of the issues relating to land contamination would fall within the remit of the IPPC permit but the issue is still a material planning consideration. However, in the absence of any indication from either the Environment Agency or English Nature the current levels of contamination on the site do not pose a threat to the surrounding land such as to justify its immediate remediation.

Human Rights issues

25. Consideration has been further given to whether the proposal would result in a breach of human rights, in particular of Article 2 - Right to Life, Article 6 - Right to a fair trial, Article 8 - Right to respect for private and family life and Article 1 of the First Protocol - Enjoyment of property. The conclusion reached was that this proposal would not result in a breach of the European Convention on Human Rights.

Other legal and procedural matters

26. A number of legal arguments were presented at the Inquiry.
27. Considering firstly the relation of this case to the case of *R v Cornwall County Council ex parte Hardy* (2000), the main issue here would be whether there is sufficient information about possible significant environmental effects of the proposal. The plant site does not include European protected species or their habitats. Whilst the access road crosses part of an internationally designated SSSI / SPA / Ramsar site, the proposal would not have an adverse effect on the integrity of the Ramsar site. Furthermore, sufficient information was provided about the possible

Appeal by SITA (GB) Ltd against refusal for an Integrated Waste Management Facility, at Ridham Dock, Iwade, Sittingbourne – SW/99/777.

28. Environmental effects of the proposal such that the case submission was not relevant in this instance.
29. The circumstances of the Berkley v SSE case referred to by Iwade Parish Council, do not mirror the circumstances of the appeal proposal so as to be directly applicable.

Award of Costs

30. A partial award of costs was made against the County Council for pursuing two reasons for refusal at the Inquiry:
 - Impact of air emissions from site vehicles using the proposed access road and
 - Impact of land contamination

The proposed level of costs are still unknown but I shall report on any further information at the meeting. A procedure exists to deal with any dispute over the potential sums involved.

Conclusions

31. The Secretary of State is satisfied that the proposal would not have an adverse effect on the integrity of the SPA/Ramsar site, and considers that the air quality, impact on human health and contamination issues could be adequately controlled under the IPPC authorisation.
32. It should be noted here that the Secretary of State would have been influenced in this decision by the position of English Nature and the Environment Agency. Whilst both originally objected these objections were withdrawn before the opening of the Inquiry. In the case of English Nature this was relatively close to the Inquiry opening.
33. He is also satisfied that the proposal would not raise any significant Human Rights issues. However, he considers that the proposal does raise significant issues, which would conflict with national policy in PPG10 and Waste Strategy 2000. Firstly, he considers that the need for the proposed facility is uncertain and has not been conclusively demonstrated in terms of the existing and future levels of waste arisings and capacity of waste disposal in Kent.
34. He accepts that some of London's waste is likely to still need to be exported to counties adjoining London, including Kent. However, it is not clear in this case that this would provide sufficient waste for a new facility. He is not satisfied that the proposal would not lead to an unnecessary provision of greater incineration capacity than is actually needed, contrary to the Waste Strategy 2000 which requires consideration of recycling and recovery before incineration with energy recovery. He notes that the proposed level of recycling at the plant would not meet the Government's recycling targets and that there was some doubt over the efficiency of the proposed recycling facilities at the plant.

Appeal by SITA (GB) Ltd against refusal for an Integrated Waste Management Facility, at Ridham Dock, Iwade, Sittingbourne – SW/99/777.

35. In addition, whilst he does not consider it to be a reason to refuse planning permission on its own, the Secretary of State considers that insufficient consideration has been given by the applicant on the potential for composting and CHP facilities.
36. Furthermore, he cannot be certain that the proposal would accord with the proximity principle, given the absence of details as to the location of the sources of wastes. The potential also exists at the appeal site for transporting the waste by methods other than by road.
37. The Secretary of State has concluded, therefore, in dismissing the appeal that the proposal is contrary to the development plan and there are no material considerations of such weight as to indicate otherwise.

Recommendation

38. I RECOMMEND that Members receive this report and take particular note of:
- (i) the degree to which the Inspector and Secretary of State considered the proposal to be against the Development Plan and
 - (ii) the extent to which the Secretary of State reinforced government advice in PPG23 and PPG10 with regards to the role of the Environment Agency in determining impact on human health.

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Background Documents – N/A
